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Letter dated 13 December 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 25 August 2004 (S/2004/686). The Counter-Terrorism Committee has received the attached fourth report from Mexico submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 10 December 2004 from the Permanent Representative of Mexico to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit herewith the replies by the Government of Mexico to the letter of 18 August 2004 from the Counter-Terrorism Committee (S/AC.40/2003/MS/OC.421).

(*Signed*) Enrique **Berruga**
Permanent Representative of Mexico to the United Nations

Appendix

Fourth report of the Government of Mexico to the Security Council Committee established pursuant to resolution 1373 (2001), submitted in response to the request by the Chairman of the Committee in his note of 18 August 2004 (S/AC.40/2003/MS/OC.421)

1. Implementation measures

Effectiveness in the protection of financial systems

1.1 The third report from Mexico states (at page 4) that "the Federal Government has prepared and will transmit to the Congress of the Union an initiative to reform the General Act on Credit Organizations and Related Activities, with the goal of making the regulations clearer concerning currency exchange centres and money transmitters". The CTC would appreciate receiving a progress report on the enactment of such legislation.

On 28 January 2004 the following legislation was published in the *Diario Oficial: Decree amending and supplementing various provisions of the Credit Institutions Act*; *Act on Savings and Loan Associations*; *Act on the Retirement Savings System*; *Federal Act on Guarantee Institutions*; *General Act on Mutual Insurance Institutions and Companies*; *Securities Market Act*; *Act on Investment Firms* and *General Act on Credit Organizations and Related Activities.*

In addition, on 7 May 2004 the *Decree amending the rules of procedure of the Ministry of Finance and Public Credit* was published in the *Diario Oficial.*

Similarly, on 14 May 2004 the following general regulations were published in the *Diario Oficial*:

- General regulations referred to in article 95 of the General Act on Credit Organizations and Related Activities applicable to exchange bureaux.
- General regulations referred to in article 95 bis of the General Act on Credit Organizations and Related Activities applicable to persons who carry out the transactions referred to in article 81-a of the Act.
- General regulations referred to in article 112 of the Federal Act on Guarantee Institutions;
- General regulations referred to in article 140 of the General Act on Mutual Insurance Institutions and Companies;
- General regulations referred to in article 52 bis-4 of the Securities Market Act;
- General regulations referred to in article 95 of the General Act on Credit Organizations and Related Activities applicable to auxiliary credit institutions;
- General regulations referred to in article 95 bis of the General Act on Credit Organizations and Related Activities applicable to anyone defined as a money transmitter under the Act;

- General regulations referred to in articles 115 of the Credit Institutions Act and 124 of the Act on Savings and Loan Associations; and
- General regulations referred to in article 108 bis of the Act on the Retirement Savings System and article 91 of the Act on Investment Firms.

Prior to the adoption of these amendments, the financial legislation did not contain provisions concerning the prevention of the financing of terrorism. Now that it is in force, financial institutions, pursuant to the general regulations issued by the Ministry of Finance and Public Credit, are required to adopt measures and procedures to prevent and detect transactions, omissions or operations that could foster or provide aid, assistance or cooperation of any nature for the commission of the offences set forth in article 139 (Terrorism) and article 400 bis (Operations involving resources derived from illicit sources) of the Federal Penal Code.

To this end, the general regulations are aimed at establishing the basic measures and procedures which financial institutions must observe to prevent, detect and report transactions involving the financing of terrorism and money-laundering, which include the following:

- Customer identification and knowledge of the customers
- Monitoring of accounts
- Establishment of risk levels for operations carried out by their customers and users
- Reporting of exceptional, unusual or suspicious operations and reporting of operations suspected of involving the financing of terrorism
- Training and dissemination regarding techniques, methods and trends in the prevention, detection and reporting of operations involving financing of terrorism and money-laundering

Similarly, through the amendments to the rules of procedure of the Ministry of Finance and Public Credit, the Ministry's powers were restructured and concentrated in a new agency called the Financial Intelligence Unit, which was granted powers to intervene in cases involving the financing of terrorism. Mexico has therefore brought its international commitments in this area into line with current standards by establishing an administrative unit with specialized knowledge in the areas of money-laundering and financing of terrorism, trained to analyse and provide the relevant authorities, within its sphere of competence, with information related to the above-mentioned illicit activities.

Finally, the amendments in question extend the system for the prevention of money-laundering and financing of terrorism to include currency exchange centres and money transmitters, which are subject to supervision for the purposes of the above-mentioned procedures and are bound to report any operations that are suspected of involving financing of terrorism and money-laundering.

1.2 Regarding the suppression of the financing of terrorist acts under the effective implementation of subparagraph 1 (a) of the Resolution, the CTC would appreciate learning whether the General Directorate for Investigations of Transactions (DGAIO) and the Special Unit to Combat Money-laundering (UECLD) of the Attorney General's Office are adequately structured, empowered and staffed (with human, financial and technical resources) in order to enable them to coordinate and carry out their mandate. Please provide data in support of your response to the above question.

It should be noted that the General Directorate for Investigations of Transactions (DGAIO) is now called the Financial Intelligence Unit (UIF) and is attached to the Ministry of Finance and Public Credit, not the Attorney General's Office.

Pursuant to the amendments to the financial legislation adopted by the Congress of the Union and published in the *Diario Oficial* of 28 January 2004, the powers of the UIF were restructured in order to enhance the effectiveness of the processes and procedures aimed at the prevention and timely detection of financing of terrorism.

The purpose of the amendments was to reorganize functions within the Ministry and to concentrate most of them within the UIF.

To this end, powers to investigate and report such crimes and monitor the related criminal proceedings were transferred from the Fiscal Prosecutor's Office (PFF) to the UIF.

Similarly, there is a system for cooperation between the UIF and the units of the Ministry of Finance and Public Credit which regulate the financial system (Banking and Savings Unit, Directorate of Insurance and Securities and Directorate-General of the Bank of Development) for the elaboration and interpretation of the applicable rules, including financial laws as they relate to money-laundering and the financing of terrorism and the general regulations applicable to each financial intermediary.

The UIF is the authority in charge of compiling and analysing information on exceptional, unusual and suspicious operations detected by the intermediaries and, if necessary, sending it to the Public Prosecutor's Office for the appropriate investigations.

Moreover, the Unit has been granted important powers for verifying, by itself or in collaboration with the regulatory authorities, whether the financial entities are complying with the rules in question.

Finally, the UIF is also empowered to perform liaison tasks with its counterparts abroad, to enable it to take part in the negotiation of international instruments in this area and in related forums and events.

In general the UIF has the following powers:

- Holds the powers of the former General Directorate for Investigations of Transactions (DGAIO), the PFF and the regulatory units;
- Disseminates and exchanges information with other national and international authorities;

- Takes part in the elaboration of regulations in this area;
- Receives and analyses the information reported by the financial institutions;
- Files complaints and charges with the Federal Public Prosecutor's Office; and
- Takes part in the negotiation of international agreements.

Similarly, the UIF has been provided with three Deputy Directorates for exercising its powers and functions: Regulations and National and International Relations, Financial Analysis and Legal Proceedings, which, within their respective spheres of competence, are responsible for the preventive and regulatory systems relating to the financing of terrorism. To this end they carry out the following measures:

- Development and implementation of state-of-the-art data-processing systems for the timely and systematic processing of reports on financing of terrorism, for the purpose of detecting transactions or operations connected with such activities;
- Assessment, using quality parameters, of the reports on such operations, making it possible to identify each financial institution's level of activity and provide feedback that will improve efforts to combat crime;
- Establishment of a team that is highly specialized in techniques for the financial analysis of money-laundering and financing of terrorism, of proven ethical standing, capable of producing coherent and high-quality analytical reports for use by the judicial authorities in their investigations;
- Cooperation with national and foreign authorities involved in the prevention and prosecution of the offence of money-laundering or of transactions involving the financing of terrorism through the timely exchange of financial information.

Considering that tracing resources and reconstructing operations involving resources derived from illicit sources (money-laundering) is highly specialized work, on 17 July 2000 article 19 ter was added to the Regulations implementing the Act establishing the Office of the Attorney General; this article establishes the Special Unit against Money-laundering (UECLD) and gives it powers to investigate and prosecute the offence of money-laundering as defined in article 400 bis of the Federal Penal Code.

Due to an internal restructuring in the Office of the Attorney General, the Regulations implementing the Act establishing the Office of the Attorney General were adopted through a Decree published in the *Diario Oficial* on 25 June 2003, and entered into force on 25 July 2003.

The Regulations restructured the then UECLD and gave it the power to investigate and prosecute not only the offence of money-laundering, but also the offences of counterfeiting and alteration of currency, committed both by persons involved in organized crime and as ordinary offences, for which reason it is now called the Specialized Unit for the Investigation of Operations Involving Resources Derived from Illicit Sources and the Counterfeiting or Alteration of Currency.

1.3 The implementation of paragraph 1 of the Resolution requires States to have in place effective executive machinery for the prevention and the suppression of financing of terrorist acts. In this regard, does Mexico provide training to its administrative, investigative, prosecutorial and judicial authorities aimed at enforcing its laws in relation to typologies and trends to counter-terrorist financing methods and techniques? In the same context, does Mexico train the said authorities in techniques for tracing property, which represents the proceeds of crime, or is to be used to finance terrorism? Please outline relevant programmes and courses in place to train Mexico's various economic sectors as to how to detect suspicious and unusual transactions related to terrorist activities.

The Ministry of Public Security (SSP), through its decentralized Federal Preventive Police (PFP), has designed various anti-terrorism plans. The Directorate of Terrorism (DGT), a division of the Intelligence Coordination for Prevention (CIP), conducts tactical and operational intelligence work to combat terrorism.

With regard to training, the Directorate, through the Training Institute of the Federal Preventive Police, provides classes in areas relating to the timely detection of terrorist acts. The following subjects are taught:

- Undercover operations
- Cyber crime
- Security measures
- Terrorism and counter-terrorism
- Various types of trafficking
- Crisis management and negotiation
- Operations with live sources
- Identification of forged documents

The general regulations concerning money-laundering and financing of terrorism require financial institutions to provide training at least once a year in the prevention of such offences; such training must include the following:

- Policies for identification and knowledge of customers, and the criteria which the institution has developed for complying with the regulations governing money-laundering and financing of terrorism, and
- Techniques, methods and trends in the prevention, detection and reporting of operations involving financing of terrorism and money-laundering.

In addition, the Financial Intelligence Unit (UIF) meets periodically with various financial intermediaries for feedback purposes and provides courses and seminars to entities that request them. From May 2004 through the submission of this report, it has conducted the following training courses:

- Course on security in the handling of financial information, for staff of the Federal Public Prosecutor's Office, and
- Five training courses in filling out the official form for sending reports have just been conducted for the staff of financial institutions.

UIF staff have attended the following training courses and seminars:

- Course on security in the handling of financial information;
- Course on techniques for the investigation of money-laundering and financing of terrorism, conducted by the Society for the Study of Criminal Policy (SEPOLCRIM);
- Seminar on the Prevention of Money-laundering and Financing of Terrorism, organized by the Banking Association of Mexico;
- Course for evaluators in the area of money-laundering and financing of terrorism, conducted by FATF in Washington, United States of America;
- Plenary meeting of the Egmont Group of Financial Intelligence Units, Isle of Guernsey, United Kingdom; and
- Plenary meeting of the Financial Action Task Force, Paris, France.

UIF is currently holding talks with the Watson Institute of the United States of America, among other institutions, for the design of a course for public and private sector officials, focusing specifically on action to combat terrorism.

Effectiveness of Counter-Terrorism Machinery

1.4 The CTC would appreciate receiving a progress report and an outline of the legal reform initiative that, according to Mexico's third report (at page 5) "will provide the authorities with the tools necessary to combat terrorism and to reflect Mexico's international commitments".

The Executive Branch has recently prepared two initiatives on terrorism: one, submitted by the Ministry of Finance and Public Credit, concerning the suppression of money-laundering and financing of terrorism, and the other, submitted by the Office of the Attorney General, concerning the criminalization of a series of terrorist and related acts.

The first amends and supplements various provisions of the Credit Institutions Act; Act on Savings and Loan Associations; Act on the Retirement Savings System; Federal Act on Guarantee Institutions; General Act on Mutual Insurance Institutions and Companies; Securities Market Act; Act on Investment Firms and General Act on Credit Organizations and Related Activities.

This comprehensive reform in the area of financing of terrorism was published in the *Diario Oficial* on 28 January 2004 and entered into force the following day.

The initiative submitted by the Office of the Attorney General aims to amend the Federal Penal Code, Federal Code of Criminal Procedure and the Federal Organized Crime Act; it was extensively discussed with other departments of the Executive Branch, especially the Ministry of Foreign Affairs, and was formally submitted to the Congress of the Union on 11 September 2003. It is currently under consideration by the Committee on Justice and Legislative Studies of the Senate of the Republic, which is expected to issue its opinion by December 2004.

The explanatory introduction makes it clear that the basic purpose of the proposed initiative is to bring national criminal legislation into conformity with Mexico's international commitments in the area of terrorism, including the twelve

international conventions and protocols and Security Council resolution 1373 (2001). Specifically, the proposals consist of the following:

Federal Penal Code

First, in accordance with the principle *aut dedere aut iudicare*, the initiative expands the scope of the Federal Penal Code to include offences initiated, prepared or committed abroad, provided that a treaty binding on Mexico provides for extradition or prosecution, other legal provisions are met and the alleged perpetrator is not extradited.

The initiative adds a new chapter, on international terrorism, to Book Two, Title Two, of the Federal Penal Code, entitled Crimes against International Law. This is intended to separate the two categories of terrorism which may be committed depending on the legal asset affected, i.e. national or international security.

This addition is intended to criminalize terrorist acts prepared or committed in our country for the purpose of undermining the authority of a foreign State or the functioning of international organizations.

The following offences are also introduced: conspiracy to commit terrorism, threat of terrorism, concealment of the activities or identity of terrorists and recruitment of terrorists. With regard to national terrorism, the proposed initiative increases the penalties for instigating (inciting or inviting) military personnel to commit terrorism and for the commission of terrorism by public servants.

Furthermore, to bring Mexican criminal legislation into line with the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the initiative establishes the offence of disseminating information known to be false, if doing so is likely to endanger the safe navigation of a ship or aircraft (Federal Penal Code, art. 167 (IX)).

Finally, it should be noted that the amendments to the Federal Penal Code also include increased penalties for the offences of terrorism and related acts, as well as the exclusion of early release for persons convicted of terrorism and related acts.[1]

Federal Code of Criminal Procedure

The offences of terrorism and related acts are introduced into the category of serious offences, making it impossible for release on bail to be granted.

Federal Organized Crime Act

Finally, the initiative amends article 2 (1) of the above-mentioned Act by criminalizing not only basic terrorism, but all related offences included in the initiative, when committed by a person involved in organized crime.

If these amendments are adopted Mexico will have a solid counter-terrorism legal framework that fully meets its international commitments under the Palermo Convention, the Convention for the Suppression of Terrorism, the FATF recommendations and United Nations Security Council resolution 1373 (2001).

[1] For additional information, see the third report of Mexico pursuant to Security Council resolution 1373 (2001) (S/2003/869), especially paragraph 1.4.

1.5 The CTC notes that Mexico has already become a party to all twelve of the international conventions and protocols on the suppression of terrorism and would, therefore appreciate receiving an outline of the legal provisions that implement them into Mexico's domestic law.

The Mexican legal order contains a system for the automatic incorporation of international treaties to which Mexico is a party, hence no enabling act is required. According to article 133 of the Political Constitution of the United Mexican States, all treaties concluded by the President of the Republic and approved by the Senate immediately become the supreme law of the Union. In addition to this fundamental precept, article 50, section I (a) of the Judicial Authority Organization Act states that offences contained in international treaties to which Mexico is a party are federal offences to be tried by federal criminal judges. In order for international treaties and conventions adopted by Mexico to become binding throughout the national territory they must be published in the *Diario Oficial*, pursuant to article 4 of the Act on the Conclusion of Treaties.

However, due to the need to typify certain criminal offences and the corresponding penalties under Mexican law, the Government of Mexico has made a series of efforts to adapt federal legislation in this area. The initiative discussed above is part of these efforts to update legislation, especially with regard to the International Convention for the Suppression of Terrorist Bombings, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Security Council resolution 1373 (2001).

Concerning the relevant provisions of the 1999 United Nations Convention for the Suppression of the Financing of Terrorism, the comprehensive reform of the financial system as regards money-laundering and financing of terrorism, of 28 January 2004, duly updates domestic legislation.

As mentioned earlier, the comprehensive reform includes the following instruments: Credit Institutions Act; Act on Savings and Loan Associations; Act on the Retirement Savings System; Federal Act on Guarantee Institutions; General Act on Mutual Insurance Institutions and Companies; Securities Market Act; Act on Investment Firms and General Act on Credit Organizations and Related Activities.